

C A M P A I G N F O R

ACCOUNTABILITY

February 25, 2019

The Honorable Julie E. Adams
Secretary of the Senate
Room S-312
U.S. Capitol
Washington, D.C. 20510-7116

The Honorable Karen L. Haas
Clerk of the U.S. House of Representatives
Room H154
U.S. Capitol
Washington, D.C. 20510-6601

Re: Lobbying Disclosure Act Violations by CFSAA

Dear Secretary Adams and Clerk Haas:

Campaign for Accountability (“CfA”) respectfully requests that you open an investigation into whether the Community Financial Services Association of America (“CFSAA”), and one of its lobbyists, Joi Sheffield, violated the Lobbying Disclosure Act (“LDA”), and take all appropriate actions to ensure compliance with the Act as required by 2 U.S.C. § 1605(a)(7)&(8).

Factual Background

CFSAA is a trade association for the payday lending industry.¹ CFSAA has employed both in house lobbyists and outside lobbying firms, including Ms. Sheffield’s firm, Sheffield Brothers.² Ms. Sheffield worked as a lobbyist for CFSAA between December 1, 2006 and September 1, 2018.³ CFSAA and Ms. Sheffield appear to have failed to disclose any contacts with the Consumer Financial Protection Bureau (“CFPB”) despite extensive contact with the agency.

¹ <https://www.cfsaa.com/membership>.

² Community Financial Services Association of America, Fourth Quarter 2018 Lobbying Disclosure Report, Secretary of the Senate, Office of Public Records; Sheffield Brothers, Third Quarter 2018 Lobbying Disclosure Termination Report on behalf of Community Financial Services Association of America, Secretary of the Senate, Office of Public Records.

³ *Id.*; Sheffield Brothers, 2006 Lobbying Disclosure Registration Report on behalf of Community Financial Services Association of America, Secretary of the Senate, Office of Public Records; <https://www.linkedin.com/in/joi-sheffield-25a3514>.

CFPB Regulation of the Payday Lending Industry

In 2010, Congress passed the Dodd Frank Wall Street Reform and Consumer Protection Act, which created the Consumer Financial Protection Bureau (CFPB).⁴ Congress gave the CFPB jurisdiction to regulate, among other things, the payday lending industry.⁵ In 2012, the CFPB began the long process of studying payday loans to determine whether to adopt regulations limiting the industry's ability to prey on low-income consumers.⁶ In November 2013, the CFPB began accepting complaints against payday lenders – a prelude to adopting regulations.⁷

On June 2, 2016, the CFPB issued its proposed rule to rein in payday lenders and issued the final rule in October 2017.⁸ On November 24, 2017, however, the head of the CFPB stepped down, and President Trump appointed the Director of the Office of Management and Budget (OMB), Mick Mulvaney, to lead the agency temporarily.⁹ Before joining the administration, Director Mulvaney had served as a member of Congress, where he was a strong ally of the payday lending industry.¹⁰

After Director Mulvaney took over, the CFPB began rolling back the payday lending rule. In January 2018, the CFPB announced plans to reconsider the rule adopted just three months earlier.¹¹ In late October, the agency announced that in January 2019 it would reconsider the “the ability-to-repay provisions” of the payday lending rule.¹² On December 6, 2018, the Senate confirmed a new CFPB director, Kathy Kraninger, who previously had worked for Director

⁴ *Dodd-Frank Wall Street Reform and Consumer Protection Act*, Public Law 111-203, 111th Congress, July 21, 2010, available at <https://www.congress.gov/bill/111th-congress/house-bill/4173>.

⁵ *Id.*

⁶ Press Release, CFPB Begins Accepting Payday Loan Complaints, Consumer Financial Protection Bureau, November 6, 2013, available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-begins-accepting-payday-loan-complaints/>.

⁷ *Id.*

⁸ Press Release, Consumer Financial Protection Bureau Proposes Rule to End Payday Debt Traps, Consumer Financial Protection Bureau, June 2, 2016, available at https://files.consumerfinance.gov/f/documents/CFPB_Proposes_Rule_End_Payday_Debt_Traps.pdf; Press Release, CFPB Finalizes Rule to Stop Payday Debt Traps, Consumer Financial Protection Bureau, October 5, 2017, available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-finalizes-rule-stop-payday-debt-traps/>.

⁹ Renae Merle, The CFPB Now Has Two Acting Directors. And Nobody Knows Which One Should Lead the Federal Agency, *Washington Post*, November 24, 2017, available at <https://www.washingtonpost.com/news/business/wp/2017/11/24/the-cfpb-now-has-two-acting-directors-and-nobody-knows-which-one-should-lead-the-federal-agency/>.

¹⁰ Special Report: Mick Mulvaney is a Payday Industry Puppet, *Allied Progress*, January 17, 2018, available at <https://alliedprogress.org/research/special-report-mick-mulvaney-is-a-puppet-for-payday-lenders/>.

¹¹ Press Release, CFPB Statement on Payday Rule, Consumer Financial Protection Bureau, January 16, 2018, available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-statement-payday-rule/>.

¹² Press Release, Public Statement Regarding Payday Rule Reconsideration and Delay of Complaint Date, Consumer Financial Protection Bureau, October 26, 2018, available at <https://www.consumerfinance.gov/about-us/newsroom/public-statement-regarding-payday-rule-reconsideration-and-delay-compliance-date/>.

Mulvaney at OMB.¹³ On February 6, 2019, the CFPB released its proposal to rescind the 2017 payday lending rule.¹⁴

CFSAs Lobbying Contacts with CFPB

As the CFPB pursued its mandate to regulate payday loans, CFSAs and its lobbyist, Joi Sheffield, lobbied the agency to oppose the regulations. For instance, on November 19, 2015, *Politico* reported, “CFSAs officials met at least three times with CFPB Director Richard Cordray since 2012, according to his public calendar.”¹⁵

Additionally, records obtained by CfA reveal that Ms. Sheffield met with CFPB officials in 2014 but did not disclose the contact on her lobbying disclosure forms. In 2015, CfA submitted a Georgia Open Records Act request to Kennesaw State University (KSU) seeking all communications between university professor Jennifer Lewis Priestley and a payday lending lawyer, Hilary Miller.¹⁶ Dr. Priestley previously had published a paper defending the payday lending industry.¹⁷ After three-years of litigation, the Georgia Supreme Court ordered the records released.¹⁸ The communications between Dr. Priestley and Mr. Miller reveal how that Dr. Priestley’s paper was funded, supervised, and edited by Mr. Miller.¹⁹

The records also indicate that after Dr. Priestley had completed an interim draft of the paper, Mr. Miller wanted to share it with CFPB officials before releasing it publicly.²⁰ On July 24, 2014, Ms. Sheffield hand delivered Dr. Priestley’s study to David Silberman, the Associate Director for Research, Markets, and Regulation at the CFPB.²¹ After the meeting, Ms. Sheffield sent an email to Mr. Miller and two CFSAs executives with the subject line, “The package has been delivered,” writing:

¹³ Emily Sullivan, Senate Confirms Kathy Kraninger as CFPB Director, *NPR*, December 6, 2018, available at <https://www.npr.org/2018/12/06/673222706/senate-confirms-kathy-kraninger-as-cfpb-director>.

¹⁴ Press Release, Consumer Financial Protection Bureau Releases Notices of Proposed Rulemaking on Payday Lending, *Consumer Financial Protection Bureau*, February 6, 2019, available at <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-releases-notices-proposed-rulemaking-payday-lending/>.

¹⁵ Anna Palmer, Emails Reveal Consumer Protection Agency’s Cozy Ties, *Politico*, November 19, 2015, available at <https://www.politico.com/story/2015/11/payday-loans-consumer-financial-protection-ties-215797>.

¹⁶ <https://campaignforaccountability.org/georgia-supreme-court-to-hear-open-records-case-against-payday-lending-group-that-bankrolled-favorable-academic-study-at-georgia-university/>.

¹⁷ Jennifer Lewis Priestley, Payday Loan Rollovers and Consumer Welfare, *SSRN*, December 5, 2014, (hereafter: Priestley, 2014) available at <https://www.documentcloud.org/documents/5686189-Priestley-Miller-Payday-Loan-Rollvers-and.html>.

¹⁸ The emails released by KSU are available at <https://www.documentcloud.org/documents/5737855-EMAILS-Redacted-BETWEEN-PRIESTLEY-and-MILLER-1.html>.

¹⁹ See Academic for Hire, *Campaign for Accountability*, February 25, 2019, available at <https://campaignforaccountability.org/wp-content/uploads/2019/02/CfA-Report-Payday-Loans-Miller-Priestley-2-25-19.pdf>.

²⁰ *Id.* Exhibit BB.

²¹ *Id.* Exhibit SS; <https://www.linkedin.com/in/david-silberman-1143414a/>.

He was appreciative of the manner in which delivered and stated that. He glanced at the first few pages and said he was looking forward to reading it. I made the points you conveyed to me Hilary and told him I hope that this would encouraged (sic) the bureau to dig deeper into this area.²²

Mr. Miller forwarded the email to Dr. Priestley, writing:

The subject line is a not-very-secret coded message to reflect that your paper was hand-delivered this morning to David Silberman, who is Associate Director for Research, Markets and Regulation at the CFPB. They have known it was coming, I think, but this is their first look. They will likely duplicate and circulate it internally, and your phone will soon start to ring. I am meeting with Jesse Leary, who is their lead economist on payday, at the end of next week, and this will also be a topic for discussion then.²³

In subsequent emails, Mr. Miller indicated that he had been in contact with CFPB officials about Dr. Priestley's paper. On November 5, 2014, Mr. Miller wrote:

We received no feedback from the CFPB about your paper. Although they told us they would be calling you with comments and suggestions, apparently they did not. I think it is reasonable to assume that they either have none, or that they want to hold their fire until after the paper is "out" so that they can get a publicity benefit from making their criticisms public. Either way, it is now approaching time to release the paper.²⁴

Failure to Disclose Lobbying Contacts With CFPB

Despite the repeated contacts with CFPB officials, both CFSAs and Ms. Sheffield's firm, Sheffield Brothers, failed to disclose any lobbying contacts with the CFPB. As noted above, Ms. Sheffield worked as a lobbyist for CFSAs from 2006 to 2018. After the CFPB was created in 2010, Ms. Sheffield never disclosed any contacts with the agency including on her third quarter 2014 report, which would have covered the meeting with Mr. Silberman.²⁵ Similarly, the CFSAs has not disclosed any lobbying contacts with the CFPB since filing its lobbying registration in March 2012.²⁶

Violations of the Lobbying Disclosure Act

²² *Id.* Exhibit SS.

²³ *Id.* Exhibit SS.

²⁴ *Id.* Exhibit TT.

²⁵ Sheffield Brothers, 2011-2018 Lobbying Disclosure Reports on behalf of Community Financial Services Association of America, Secretary of the Senate, Office of Public Records, accessed at <https://soprweb.senate.gov/index.cfm?event=selectFields&reset=1>.

²⁶ Community Financial Services Association of America, 2012-2018 Lobbying Disclosure, Secretary of the Senate, Office of Public Records, accessed at <https://soprweb.senate.gov/index.cfm?event=selectFields&reset=1>.

CFSA and Ms. Sheffield apparently violated the Lobbying Disclosure Act by failing to disclose their contacts with CFPB. The Lobbying Disclosure Act defines the term “lobbying contact” broadly to include “any oral or written communication . . . to a covered executive branch official . . . that is made on behalf of a client with regard to . . . the formulation, modification, or adoption of a Federal rule, regulation, Executive order, or any other program, policy, or position of the United States Government.”²⁷ Similarly, the definition of “covered executive branch official” is broadly defined to include “any officer or employee serving in a position in level I, II, III, IV, or V of the Executive Schedule” as well as “any officer or employee serving in a position of a confidential, policy-determining, policy-making, or policy-advocating character.”²⁸

Ms. Sheffield’s July 2014 meeting with Mr. Silberman clearly constituted a reportable lobbying contact under the Lobbying Disclosure Act. Mr. Silberman appears to be a “covered executive branch official[]” within the meaning of 2 U.S.C. § 1602(3)(D)&(F). Moreover, the express purpose of the meeting was to argue against the CFPB’s own research regarding payday loans. Additionally, the meetings between the CFSA officials and Mr. Cordray clearly are reportable lobbying contacts.

A lobbying firm registered with the Senate and the House of Representatives under the Lobbying Disclosure Act is required to file quarterly activity reports each of which must include “a statement of the Houses of Congress and the Federal agencies contacted by lobbyists employed by the registrant on behalf of the client.”²⁹ CFSA and Ms. Sheffield failed to disclose that they had made such lobbying contacts at CFPB.

Additionally, the Lobbying Disclosure Act requires registrants to provide a statement on each quarterly activity report of the “Houses of Congress *and* the Federal agencies contacted” by lobbyists on behalf of their client.³⁰ CFSA and Ms. Sheffield have never reported any lobbying contacts with the CFPB. Accordingly, CFSA and Ms. Sheffield seemingly violated 2 U.S.C. § 1604(b)(2)(B).

²⁷ 2 U.S.C. § 1602(8)(A)(ii).

²⁸ 2 U.S.C. § 1602(3)(D)&(F).

²⁹ 2 U.S.C. § 1604(b)(2)(B).

³⁰ 2 U.S.C. § 1604(b)(2)(B)(emphasis added).

Conclusion

CFSAs and Ms. Sheffield appear to have violated the Lobbying Disclosure Act by failing to disclose lobbying contacts they made with covered executive branch officials at CFPB. Therefore, Campaign for Accountability respectfully requests that you initiate an investigation of CFSAs and Ms. Sheffield and take all appropriate actions to ensure compliance with the Act as required by 2 U.S.C. § 1605(a)(7)&(8).

Sincerely,

A handwritten signature in blue ink, appearing to read "Dan E. Stevens".

Daniel E. Stevens
Executive Director